

PHA and submit the Plan to the HUB/Program Center through its PHA.

(2) The HUB/Program Center may require, on a risk management basis, a standard performer with a score of not less than 70 percent to submit within 30 days after receipt of its PHAS score an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator and/or component of a PHAS indicator identified as deficient.

(c) *Correction of deficiencies.* (1) *Time period for correction.* After a PHA's receipt of its PHAS score and designation as a standard performer or, in the case of an RMC, notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD approved Improvement Plan if an Improvement Plan is required.

(2) *Notification and report to HUB/Program Center.* A PHA shall notify the HUB/Program Center of its action to correct a deficiency. A PHA shall also forward to the HUB/Program Center an RMC's report of its action to correct a deficiency.

(d) *Improvement Plan.* An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score under each individual PHAS indicator and/or component that was identified as a deficiency;

(2) Describe the procedures that will be followed to correct each deficiency;

(3) Provide a timetable for the correction of each deficiency; and

(4) Provide for or facilitate technical assistance to the PHA.

(e) *Determination of acceptability of Improvement Plan* (1) The HUB/Program Center will approve or deny a PHA's (or RMC's Improvement Plan submitted to the HUB/Program Center through the RMC's PHA), and notify the PHA of its decision. A PHA that submits an RMC's Improvement Plan must notify the RMC in writing, immediately upon receipt of the HUB/Program Center notification, of the HUB/Program Center approval or denial of the RMC's Improvement Plan.

(2) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the HUB/

Program Center for revising the Improvement Plan to obtain approval.

(f) *Submission of revised Improvement Plan.* A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the HUB/Program Center recommendations.

(g) *Failure to submit acceptable Improvement Plan.* If a PHA fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the HUB/Program Center will notify the PHA of its noncompliance. The PHA (or the RMC through the PHA) will provide the HUB/Program Center its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be referred to the TARC for remedial actions or such actions as the TARC may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations. If the TARC determines that it is appropriate to refer the PHA to the Enforcement Center, it will only do so after the PHA has had 1 year since the issuance of the PHAS score (or, in the case of an RMC, notification of its score from a PHA) to correct its deficiencies.

#### § 902.75 Referral to a TARC.

Upon designation of a PHA as troubled, in accordance with the requirements of section 6(j)(2)(B) of the 1937 Act and in accordance with this part, the REAC shall refer each troubled PHA to the PHA's area TARC for remedial action. The actions to be taken by the TARC and the PHA shall be as follows:

(a) *Recovery plan and MOA.* Within 30 days of notification of the designation of a troubled PHA within its area, the appropriate TARC will deploy an on-site team to develop a Recovery Plan. The Recovery Plan shall include recommendations for improvements to correct or eliminate deficiencies that resulted in a failing PHAS score and

designation as troubled. The Recovery Plan will incorporate a memorandum of agreement (MOA) as described in paragraph (c) of this section.

(b) *PHA review of recovery plan and MOA.* The PHA will have 10 days to review the recovery plan and the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the plan with its area TARC, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by the TARC, the MOA is to be executed 15 days following issuance of the preliminary MOA.

(c) *Memorandum of agreement (MOA).* The final MOA is a binding contractual agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the PHAS indicators or components identified as a deficiency;

(2) Annual and quarterly performance targets, which may be the attainment of a higher score within an indicator that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by HUD, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled or mod-troubled designation and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including, but not limited to, such sanctions as the imposition of budget and management controls by the TARC, declaration of substantial default and subsequent actions, including referral to the Enforcement Center for judicial appointment of a receiver, limited denial of partici-

pation, suspension, debarment, or other actions deemed appropriate by the Enforcement Center; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(d) *Maximum recovery period.* Unless extended by the TARC and documented in the MOA, the maximum recovery period for a troubled PHA is the first full fiscal year following execution of the MOA.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson and accompanied by a Board resolution, or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the HUD/Program Center.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.* (1) If a troubled PHA does not execute an MOA within the period provided in paragraph (b) of this section, or the TARC determines that the PHA does not show a substantial improvement toward a passing PHAS score following the issuance of the failing PHAS score

by the REAC, the TARC shall refer the PHA to the Enforcement Center, which shall initiate proceedings for judicial appointment of a receiver, and other sanctions as may be appropriate. For purposes of this paragraph (g), *substantial improvement* is defined as 50 percent of the points needed to achieve a passing PHAS score as determined by the REAC. The maximum period of time for remaining in troubled status before being referred to the Enforcement Center is 2 years.

(2) The following example illustrates the provisions of paragraph (g)(1) of this section:

*Example:* A PHA receives a score of 50; 60 is a passing score. The PHA is referred to the TARC. Within 1 year after the score is issued to the PHA, the PHA must achieve a 5-point increase to continue recovery efforts in the TARC. If the PHA fails to achieve the 5-point increase, the PHA will be referred to the Enforcement Center. The maximum period of time for remaining in troubled status before being referred to the Enforcement Center is 2 years.

(h) To the extent feasible, while a PHA is under a referral to a TARC, all services to residents will continue uninterrupted.

#### **§ 902.77 Referral to the Enforcement Center.**

(a) Failure of a troubled PHA to execute or meet the requirements of a memorandum of agreement in accordance with § 902.75 constitutes a substantial default in accordance with § 902.79 and shall result in referral to the Enforcement Center. The Enforcement Center is officially responsible for recommending to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. The Enforcement Center shall initiate the judicial appointment of a receiver or the interventions provided in § 902.83; and may initiate limited denial of participation, suspension, debarment, the imposition of other sanctions available to the Enforcement Center including referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(b) To the extent feasible, while a PHA is under a referral to the Enforce-

ment Center, all services to residents will continue uninterrupted.

#### **§ 902.79 Substantial default.**

(a) *Events or conditions that constitute substantial default.* The following events or conditions shall constitute substantial default.

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the 1937 Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant ACC.

(2) HUD may determine that a PHA's failure to satisfy the terms of a memorandum of agreement entered into in accordance with § 902.75, or to make reasonable progress to execute or meet requirements included in a memorandum of agreement, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a PHA that has been designated as troubled and does not show substantial improvement, as defined in § 902.75(g), in its PHAS score in 1 year following issuance of the failed score is in substantial default.

(4) HUD may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(5) HUD may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

(b) *Notification of substantial default and response.* If information from an annual assessment or audit, or any other credible source (including but not limited to the Office of Fair Housing Enforcement, the Office of the Inspector General, a judicial referral or a referral from a mayor or other official) indicates that there may exist events or conditions constituting a substantial breach or default, HUD shall advise a PHA of such information. HUD is authorized to protect the confidentiality of the source(s) of such information in